



## **Competition Act Requirements for Companies Acquiring an Existing Canadian Business**

Companies looking to expand into Canada by way of acquiring an existing business should be aware of potential requirements under the *Competition Act* (Canada). The *Competition Act* requires parties to certain types of transactions that exceed both (1) a parties' threshold and (2) a transaction threshold to notify the Commissioner of Competition (the "**Commissioner**") of the proposed transaction prior to closing. Specifically, this pre-merger notification requirement is triggered if both of the following thresholds are exceeded, subject to any available exemptions:

- The parties to the proposed transaction, together with their affiliates, have combined assets in Canada or gross annual revenues from sales in, from or into Canada exceeding C\$400 million; and
- The target has assets in Canada or revenues from sales in or from Canada exceeding C\$93 million.

Where the above-noted thresholds are exceeded, and no exemptions are available, the parties to the proposed transaction must notify the Commissioner by supplying certain required information before completing the merger. Once the notification form is filed with the Commissioner, the parties must wait 30 days before completing the transaction, unless the Competition Bureau issues a supplementary information request ("**SIR**"), in which case the transaction cannot be completed until 30 days after the parties have complied with the SIR.

The *Competition Act* imposes criminal sanctions for failure to comply with the waiting period requirements or if a party fails to notify when required. In addition, administrative monetary penalties of up to C\$10,000 per day may be assessed for non-compliance.

Parties can apply to the Commissioner for an advance ruling certificate ("**ARC**") when it is clear that no substantive competition issues will arise in connection with a proposed transaction. Receipt of an ARC exempts the parties from the transaction notification requirements and also effectively precludes the Commissioner from challenging the transaction, provided the transaction has been substantially completed within one year following the issuance of the ARC. As of April 1, 2021, there is a filing fee of \$74,905.57 regardless of the type of filing made to the Competition Bureau.

Under the *Competition Act*, the Commissioner may file an application with the Competition Tribunal (the "**Tribunal**") challenging a proposed merger (or any substantially-completed merger within one year following closing) based on the grounds that the merger will prevent or lessen competition substantially. The Tribunal has the power to make certain orders, including the prohibition of the merger before it occurs, the dissolution of a merger after it has occurred and the disposition of assets or shares.

We encourage you to reach out to your Aird & Berlis contacts to discuss further.

## Contacts



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Fiona has extensive experience advising international businesses entering the Canadian market. To date, she has advised more than 100 companies expanding into Canada. Fiona advises clients in this space all day, every day. She has been practising for more than a decade and is a regular speaker and writer on market expansion matters. Fiona is proud to have been recognized by *The Best Lawyers in Canada*, *The Canadian Legal Lexpert Directory* and *Benchmark Canada*.

A proactive and comprehensive approach is required to succeed in a new market. Fiona manages teams of other lawyers and patent agents to provide her clients with a full range of legal services to help their businesses grow. She acts as project manager to ensure her clients receive seamless legal services in all relevant areas.

Fiona takes great care to understand her clients' businesses and deliver advice that is tailored to meeting their specific needs. Her responsiveness, dedication to clear communication and hands-on approach show that she is personally invested in the success of her clients.



### Felix Ng

Associate

Felix is a dedicated corporate lawyer. He is committed to learning about the intricacies of his clients' businesses in order to help them reach their goals. Felix's clients appreciate his responsiveness and problem solving skills on a wide variety of corporate matters.

Felix is a member of the firm's Corporate/Commercial Group. His practice focuses on M&A transactions and advising international clients on expanding their businesses into Canada. Felix represents clients in a range of industries, including pharma, e-commerce, transportation, agriculture, food and beverage and construction.

Felix has passed Level III of the Chartered Financial Analyst (CFA) Program.